



DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1777

[Docket No. RUS-21-WATER-0017]

RIN # 0572-AC55

Section 306C Water and Waste Disposal (WWD) Loans and Grants

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule with request for comment.

SUMMARY: The Rural Utilities Service (RUS), an agency of the Rural Development mission area within the U.S. Department of Agriculture (USDA), hereinafter referred to as the Agency or RUS, is issuing a final rule with comment to revise the Section 306C WWD Loans and Grants program regulations to implement changes recommended by Government Accountability Office (GAO) Audit Report GAO 18-309, "Drinking Water and Wastewater Infrastructure Opportunities Exist to Enhance Federal Agency Needs Assessment and Coordination on Tribal Projects" (Audit Report) issued on May 15, 2018, and available at: <https://www.gao.gov/products/gao-18-309>. The Agency is also implementing other changes to clarify terminology and policies, update scoring criteria, and allow the program to run more efficiently.

DATES: *Effective date:* This final rule is effective [INSERT DATE 90 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comment date: Comments are due [INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number RUS-21-Water-0017 and Regulatory Information Number (RIN) number 0572-AC55 through <https://www.regulations.gov>.

Instructions: All submissions received must include the Agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov>.

ADDRESSES: Additional information about Rural Development and its programs is available on the Internet at <https://www.rd.usda.gov/programs-services>. Information specific to this program may be found on the Internet at:

<https://www.rd.usda.gov/programs-services/water-environmental-programs>

FOR FURTHER INFORMATION CONTACT: Charles Stephens, Assistant Administrator, Water and Environmental Programs, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC 20250; email: charlesd.stephens@usda.gov ; telephone: (202) 619-8500.

SUPPLEMENTARY INFORMATION:

I. Executive Orders/Acts

Executive Orders 12866 and 13563 Classification

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches to maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) number, also known as Assistance Listing number, assigned to the program is 10.770, Water and Waste Facility Loans and Grants to Alleviate Health Risks. The CFDA is available on the Internet at <https://sam.gov/content/assistance-listings>. The Government Printing Office (GPO) prints and sells the CFDA to interested buyers. For information about purchasing the CFDA from GPO, call the Superintendent of Documents at 202-512-1800 or toll free at 866-512-1800, or access GPO's on-line bookstore at: U.S. Government Bookstore <https://bookstore.gpo.gov/>.

Executive Order 12372 – Intergovernmental Consultation

This program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. Rural Development will conduct intergovernmental consultation using RD Instruction 1970-I, “Intergovernmental Review,” available in any Agency office, or at <https://www.rd.usda.gov/sites/default/files/1970i.pdf> and in 2 CFR part 415, subpart C. Note that not all States have chosen to participate in the intergovernmental review process. A list of participating States is available at: <https://www.whitehouse.gov/omb/office-federal-financial-management/>. Applications from Federally Recognized Indian Tribes are not subject to this requirement.

Paperwork Reduction Act

This rule contains no new reporting or recordkeeping burdens under OMB control number 0572-0121 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, Public Law 91-190, this final rule has been reviewed in accordance with 7 CFR part 1970 (“Environmental Policies and Procedures”). The Agency has determined that (1) this

action meets the criteria established in 7 CFR 1970.53(f); (2) no extraordinary circumstances exist; and (3) the action is not “connected” to other actions with potentially significant impacts, is not considered a “cumulative action” and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

Regulatory Flexibility Act

RUS certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The RUS Water and Waste low-interest loan and grant programs provide funds to eligible entities with a focus on promoting public water and waste access at reasonable user costs throughout rural America. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

Executive Order 12988 – Civil Justice Reform

This rule has been reviewed under Executive Order 12988. In accordance with this rule: (1) unless otherwise specifically provided, all State and local laws that conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before bringing suit in court that challenges action taken under this rule.

Executive Order 13132 – Federalism

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor

does this rule impose substantial direct compliance costs on state and local governments.

Therefore, consultation with the States is not required.

Executive Order 13175 - Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on the Agency in the development of regulatory policies that have tribal implications or preempt tribal laws. The Agency has determined that the rule may have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this rule is subject to the requirements of Executive Order 13175. GAO, during the preparation of their Audit Report described in the **SUMMARY** section of this notice, sought and received input from 22 Tribes. As part of the Agency's consultation process, the Agency hosted two listening sessions on November 30, 2021 and December 1, 2021. No substantive comments were received from Tribes during the listening sessions. If tribal leaders are interested in government-to-government consultation with the Agency on this rule, they are encouraged to contact RD's Tribal Coordinator at: AIAN@usda.gov. RD will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

E-Government Act Compliance

Rural Development is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Civil Rights Impact Analysis

Rural Development has reviewed this rule in accordance with USDA Regulation 4300-4, "Civil Rights Impact Analysis," to identify any major civil rights impacts the rule

might have on program participants on the basis of age, race, color, national origin, sex, disability, marital or familial status. Based on the review and analysis of the rule and all available data, issuance of this Final Rule is not likely to negatively impact low and moderate-income populations, minority populations, women, Indian tribes or persons with disability, by virtue of their age, race, color, national origin, sex, disability, or marital or familial status.

USDA Non-Discrimination Statement

In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720-2600 (voice and TTY); or the 711 Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at <https://www.usda.gov/sites/default/files/documents/ad-3027.pdf> from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written

description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

(1) Mail: U.S. Department of Agriculture

Office of the Assistant Secretary for Civil Rights

1400 Independence Avenue, SW

Washington, D.C. 20250-9410; or

(2) Fax: (833) 256-1665 or (202) 690-7442; or

(3) Email: program.intake@usda.gov

II. Background

Rural Development is a mission area within USDA comprised of the RUS, Rural Housing Service, and Rural Business-Cooperative Service. Rural Development's mission is to increase economic opportunity and improve the quality of life for all rural Americans. Rural Development meets its mission by providing loans, loan guarantees, grants and contracts through more than 40 programs aimed at creating and improving housing, business, and infrastructure throughout rural America.

The Water and Waste Facility Loans and Grants to Alleviate Health Risks program was established by Section 306C of the Consolidated Farm and Rural Development Act (ConAct). The ConAct established the program to provide loans and grants to low-income communities in eligible areas which face significant health risks, and lack access to safe, reliable drinking water and waste disposal facilities and services. For the purpose of this program, eligible projects include those that primarily benefit members of federally recognized Tribes, or are within areas recognized as a Colonia before October 1, 1989, that are located in a city, town, or unincorporated area with a population of no more than 10,000 residents.

"Drinking Water and Wastewater Infrastructure Opportunities Exist to Enhance Federal Agency Needs Assessment and Coordination on Tribal Projects" issued on May 15, 2018, and available at: <https://www.gao.gov/products/gao-18-309> recommended that the Agency implement scoring criteria for the Native American funding within the Section 306C WWD Loans and Grants program, similar to those that currently exist for the Colonias. The specific scoring criteria cited provide additional points for projects that increase access to clean drinking water and reduce health risks. In addition to those changes, the Agency is updating the regulation to include current policies and procedures, and clarify terminology, including the per capita income and unemployment criteria.

III. Discussion of the Rule

This section discusses the key changes to the regulation.

To conform to Section 306C of the ConAct, the Agency has updated the name of Part 1777 to Water and Waste Facility Loans and Grants to Alleviate Health Risks. Key terms have been updated for consistency with other regulations and directives. The structure of Part 1777 has been reworked to provide easier usability by customers and to differentiate the different requirements of loans and grants that are for public infrastructure versus those for individuals.

As Section 306C governs the implementation of multiple fund allocations, including Tribal and Colonias allocations, § 1777.1(d) was revised to clarify that funds specifically appropriated for Tribes through this part will only be awarded to Tribes and entities serving Tribal members.

Per statute, Tribal entities eligible for Section 306D, "Water Systems for Rural Native Villages in Alaska Program" are not eligible to receive grant funding under this program. That statutory restriction is included at § 1777.1(e) to ensure applicants are aware of all requirements and restrictions.

Section 1777.4, "Definitions" was modified to update and conform definitions now used in part 1777.

Section 1777.11 was revised to update the section name and to include regulatory cross references to the appropriate regulations that govern application/processing of loans and servicing of loans for public infrastructure projects.

Section 1777.12 was modified as follows:

(a) The title of the section was changed to "Public Infrastructure - Eligibility"; and only provides information pertaining to loans and grants for facilities;

(b) The introductory text of paragraph (a) was re-worded to clarify which paragraphs apply only to Tribal funding under Section 306C and removes the reference to preapplications as the Agency no longer requires them. Additionally, "...RUS Assistant Administrator for Water and Environmental Program ..." was added to indicate who may begin the process of using a source other than the current American Community Survey (ACS);

(c) Paragraph (a)(1) was revised by specifying "United States Department of Commerce, United States Census Bureau."

(d) Paragraph (a)(3) was added to clarify that if an applicant is not a Federally Recognized Tribe, the project may still be considered eligible if more than 50 percent of the users in the project area are members of a Federally Recognized Tribe. Also, for applicants that are not Tribes, but are proposing to serve a Tribal area, a resolution or letter of support from the tribe is now required.

Section 1777.13 now contains requirements for how funds for public infrastructure projects may be used. The project priority and scoring information previously located in this section is moved to § 1777.14 for public infrastructure projects and to § 1777.33 for projects benefitting individuals and scoring has been updated to reflect current practice. In order to address the recommendation of the GAO audit to

make scoring consistent between Colonia and Tribal applicants, points for access and health risks are now applied consistently to all project applications in § 1777.14(c)(5) and § 1777.33(c)(8).

Section 1777.15 has been added to provide rates and terms for public infrastructure loans. This information was previously found at § 1777.31.

Sections 1777.30 through 1777.34 now cover individual loan and grant eligibility, use of funds, administration of funds and rates and terms. These sections have been updated to document current process and practices.

Section 1777.42 was reworded for clarity.

Section 1777.43, Exception Authority, was added to allow the Administrator of Rural Utilities Service to make an exception to any requirement or provision of this part that is not inconsistent with statute or other applicable laws and is in the best interest of the government.

List of Subjects for 7 CFR 1777

Community development, Community facilities, Grant programs-housing and community development, Loan programs-housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply.

For the reasons discussed in the preamble, the Agency revises 7 CFR part 1777 to read as follows:

PART 1777 –WATER AND WASTE FACILITY LOANS AND GRANTS TO ALLEVIATE HEALTH RISKS

Sec.

1777.1 General.

1777.2 [Reserved]

1777.3 Objective.

1777.4 Definitions.

1777.5 - 1777.10 [Reserved]

1777.11 Public infrastructure - Making, processing, and servicing loans and grants.

1777.12 Public infrastructure - Eligibility.
1777.13 Public infrastructure - Use of funds.
1777.14 Public infrastructure - Application processing and scoring.
1777.15 Public infrastructure - Rates and terms.
1777.16 - 1777.29 [Reserved]
1777.30 Individual loans and grants - Making, processing, and servicing loans and grants.
1777.31 Individual loan and grant eligibility.
1777.32 Individual loans and grants - Use of funds.
1777.33 Individual loans and grants - Administration of funds.
1777.34 Individual loans - Rates and terms.
1777.35 - 1777.41 [Reserved]
1777.42 Delegation of authority.
1777.43 Exception authority.
1777.44 Availability of forms and regulations.
1777.45 - 1777.99 [Reserved]
1777.100 OMB control number.

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005

§ 1777.1 General.

(a) This part outlines Rural Utilities Service (RUS) policies and procedures for making Water and Waste Facility loans and grants authorized under Section 306C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(c)), as amended.

(b) Agency officials will maintain liaison with officials of other federal, Tribal, state, regional, and local development agencies to coordinate related programs to achieve rural development objectives.

(c) Agency officials will cooperate with appropriate Tribal and state agencies in making loans and/or grants that support Tribal and state strategies for rural area development.

(d) Funds specifically appropriated for Tribal members in accordance with this part will be considered for use by Federally Recognized Tribes regardless of whether State development strategies include Tribes and their reservations. Tribal members residing on such reservations must have an equal opportunity to participate in this program.

(e) Entities eligible for a grant under the 306D Water Systems for Rural and Native Villages in Alaska Program are not eligible to receive grant assistance under this regulation from funds appropriated for Tribal members as referenced in paragraph (d) of this section.

(f) Federal statutes provide for extending the Agency's financial programs without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the participant possesses the capacity to enter into legal contracts).

§ 1777.2 [Reserved]

§ 1777.3 Objective.

The objective of the Section 306C Water and Waste Facility Loans and Grants to Alleviate Health Risks program is to provide water and waste disposal facilities and services to low-income rural areas whose residents are experiencing a significant health risk due to the fact that a significant proportion of the community's residents do not have access to, or are not served by, adequate affordable water supply systems or waste disposal facilities.

§ 1777.4 Definitions.

The following definitions apply to this part:

Agency. The Rural Utilities Service or its successors.

Applicant. The entity that has applied for assistance under this part. The entity may be a public body such as municipality, county, district, authority or other political subdivisions of a state, an organization operated on a not-for-profit basis such as an association, cooperative or private corporation, or a Federally Recognized Tribe as defined in the Federally Recognized Indian Tribal List Act of 1994 (Pub. L. 103-454, 108 Stat. 4791-4792). An entity operated on a not-for-profit basis must be controlled by a

local public body or bodies or have a broadly based ownership by or membership of people of the local community.

Colonia. Any identifiable community designated in writing by a state, county or Federally Recognized Tribe in which it is located; determined to be a Colonia on the basis of objective criteria including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing, inadequate roads and drainage; and existed and was generally recognized as a Colonia before October 1, 1989. Colonia's eligible areas include the entire county where more than half of the area of the county is within 150 miles of the United States and Mexico border. The county governing body, state, or Tribal government must designate the respective communities in the county as Colonia. The individual Colonia still must meet all other qualifications. If only some of the counties within the 150-mile area are designated and a county is later designated, written evidence of Colonia designation must be placed in the respective files.

Cooperative. A cooperative formed specifically for the purpose of the installation, expansion, improvement, or operation of water supply or waste disposal facilities or systems.

Individual. The recipient of financial assistance for improvements to a private dwelling to facilitate the use of the water or waste disposal system.

Median household income. The income data used in this part to determine median household income must be that which most accurately reflects the income of the service area. The median household income of the service area and the Statewide Nonmetropolitan Median Household Income will be determined by 5-year income data from the United States Department of Commerce, United States Census Bureau, American Community Survey (ACS) or, if needed, other Census Bureau data. If there is reason to believe that the census data is not an accurate representation of the median household income within the area to be served, the reasons will be documented and the

applicant may furnish, or the Agency may obtain, additional information regarding such median household income. Information will consist of reliable data from local, regional, State, Tribal or Federal sources, or from a survey conducted by a reliable impartial source.

Rural areas. Includes any city, town, or unincorporated area with a population not in excess of 10,000 inhabitants in any of the 50 States of the United States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, according to the most recently implemented decennial census of the United States. If the applicable population figure cannot be obtained from the most recently implemented decennial census, the RUS Assistant Administrator for Water and Environmental Programs will determine the applicable population figure based on available population data.

Statewide Nonmetropolitan Median Household Income (SNMHI). Median household income of a state's nonmetropolitan counties and portions of metropolitan counties outside of cities, towns or places of 50,000 or more population. The SNMHI is set by the RUS Water and Environmental Program. The nonmetropolitan median household income of the State may only be updated on a national basis by the RUS National Office.

Tribe. Federally Recognized Tribes as defined in the Federally Recognized Indian Tribal List Act of 1994 (Pub. L. 103-454, 108 Stat. 4791-4792), as well as Tribal organizations, enterprises, authorities and utilities that are duly established pursuant to the Constitution and bylaws of such Tribe.

§§ 1777.5 through 1777.10 [Reserved]

§ 1777.11 Public infrastructure - Making, processing, and servicing loans and grants.

Unless specifically modified by this part, loans and grants will be made and processed in accordance with 7 CFR 1780, “Water and Waste Loans and Grants” and serviced in accordance with 7 CFR 1782, “Servicing of Water and Waste Programs.”

§ 1777.12 Public infrastructure - Eligibility.

(a) The provisions of paragraphs (a)(1), (2), and (3) of this section apply to applications submitted by all eligible entities except for Colonias. The facility financed under this part must provide water and/or waste disposal services to rural areas where, on the date the application is received by the Agency, the:

(1) Per capita income of the residents is not more than 70 percent of the most recently USDA implemented national average per capita income, as determined by 5-year income data from the United States Department of Commerce, United States Census Bureau, ACS or, if needed, other Census Bureau data. If the RUS Assistant Administrator for Water and Environmental Program (WEP) has reason to believe that the ACS or other Census Bureau data does not accurately represent the per capita income of the residents, the reasons will be documented and the applicant may furnish, or the Agency may obtain, additional information regarding such per capita income data. Information must consist of reliable data from local, regional, state, Tribal or Federal sources or from a survey conducted by a reliable impartial source, and,

(2) Unemployment rate of the residents is not less than 125 percent of the most recent national average unemployment rate, as determined by the Bureau of Labor Statistics.

(3) Projects for which the applicant is not a Federally Recognized Tribe, but which will benefit Tribal members, may be considered eligible for funds under this part if the applicant provides acceptable documentation and certifies that more than 50 percent of the users in the project service area are members of Tribes. In such cases, funds awarded under this part cannot exceed the applicable percentage of the total

eligible project cost. If the applicant is not a Tribe, the applicant must solicit a resolution or letter of consent in support of the application from the benefiting Tribe.

(b) Residents of the rural area to be served must be experiencing a significant health risk due to the fact that a significant proportion of the community's residents do not have access to, or are not served by, adequate, affordable, water supply systems and/or waste disposal facilities. The Agency's records must clearly document and support this determination. The following requirements regarding the documentation must be followed:

(1) The originating documentation must come from an independent third-party source that has the experience in specifying the health or sanitary problem that currently exists.

(2) The documentation must state specifically the health or sanitary problems that exist. General statements of problems or support for the project are not acceptable.

(3) Current users of the facility, and not future or possible users, must be experiencing the current health or sanitary problem.

(4) If no facility exists, documentation must include specific health and sanitary problems associated with individual facilities that currently exist to warrant the health and sanitary determination.

(5) In instances where eligible applicants are proposing to finance water or waste disposal infrastructure improvements addressing health and sanitary problems and that will help alleviate overcrowding or lack of housing, the applicant must provide adequate plans that reasonably demonstrate that the new housing development will be fully financed and will be completed once the infrastructure is completed.

§ 1777.13 Public infrastructure - Use of funds.

(a) Funds may be used to:

(1) Develop, construct, repair, replace and/or enlarge new and/or existing wells, reservoirs, transmission lines, treatment plants, and/or other sources of potable water.

(2) Construct, extend, repair, replace and/or enlarge new and/or existing waterlines and other necessary system components.

(3) Develop, construct, repair, replace and/or enlarge new and/or existing waste disposal, treatment, and other associated facilities.

(4) Construct, extend, repair, replace and/or enlarge new and/or existing collection lines and/or other necessary system components.

(5) Any other cost associated with resolving a significant health risk by granting the community access to an adequate affordable water supply system and/or waste disposal facility.

(b) Grants can be made up to 100 percent of eligible project costs.

§ 1777.14 Public infrastructure - Application processing and scoring.

(a) *General.* RUS may retain funds at the National Office or may allocate funds to Rural Development (RD) State Offices. Funds allocated to RD State Offices that remain unobligated may be pooled at the National Office's discretion and made available to any RD State Offices with eligible applications on a case-by-case basis. The application and supporting information submitted with it will be used to determine applicant eligibility and scoring for available funds. Applicants that do not receive an award will be advised of their appeal rights in accordance with 7 CFR part 11. Paragraph (c) of this section indicates items and conditions which will be considered in selecting applications for funding. When ranking eligible applications for consideration of limited funds, Agency officials will consider the scoring criteria met by each application and the degree to which those criteria are met.

(b) *Agency review.* Applications should be submitted in accordance with 7 CFR 1780. For funds retained at RUS National Office, applications will be processed, scored,

and reviewed for funding priority by the processing office and then submitted for consideration to the RUS National Office. It is preferred that applications be submitted electronically through RD Apply or its successor platforms. Where electronic application is not feasible, an application can be submitted physically to the local processing office. Information relating to the local processing office may be found at www.rd.usda.gov. For funds allocated to RD state offices, the respective office will process, score, and fund projects with the available allocation. Projects that cannot be fully funded within the allocation will be considered in accordance with funds retained at the RUS National Office on a project-by-project basis. The Agency reserves the right to make no award if: no funding is received, or all applications are ineligible, incomplete, or do not meet the established program objectives and priorities. The Agency may determine that the application is:

- (1) Eligible and selected for funding,
- (2) Eligible but offered less funds than requested,
- (3) Eligible but not selected for funding due to ranking of all applications by

score, or

- (4) Ineligible for funding.

(c) *Scoring*. The criteria in paragraphs (c)(1) through (6) of this section will be used to rank applications and in selecting projects for funding.

(1) *Population*. The proposed project will primarily serve a rural area having a population:

- (i) Not in excess of 1,000 - 25 points.
- (ii) Between 1,001 and 2,500 - 15 points.
- (iii) Between 2,501 and 5,500 - 5 points.

(2) *Income*. The median household income of population to be served by the proposed project is:

(i) Not in excess of 50 percent of the SNMHI - 30 points.

(ii) More than 50 percent and not in excess of 60 percent of the SNMHI income - 20 points.

(iii) More than 60 percent and not in excess of 70 percent of the SNMHI - 15 points.

(3) *Joint financing*. The amount of funds , other than RUS funds, committed to the proposed project is:

(i) Fifty percent or more - 15 points.

(ii) Twenty to forty-nine percent - 10 points.

(iii) Five to nineteen percent - 5 points.

(4) *Colonia*. (See definition in § 1777.4). The proposed project will provide water or waste disposal services to the residents of a recognized Colonia - 25 points.

(5) *Access and health risks*. (i) A service area that lacks access to both water and waste disposal facilities, resulting in a significant health risk - 50 points.

(ii) A service area that lacks access to either water or waste disposal facilities, resulting in a significant health risk - 40 points.

(iii) A service area that has access to water and waste disposal facilities but has a significant health risk - 20 points.

(6) *Discretionary*. (i) State Director or designee with loan and grant approval authority in certain cases, and when a written justification is prepared, may assign up to 15 points for administrative and programmatic priorities for items including, but not limited to, natural disasters, priority coordination between RUS and other agencies, including leveraged funding or other initiatives identified by the administration, to assist those projects that are the most cost effective, or to projects located in areas experiencing high unemployment and poverty rates and severe health risks.

(ii) RUS Administrator may assign up to 15 additional points that will be considered in the total points for items including, but not limited to, the geographic distribution of funds nationally and within the state, and the severity of health risks.

§ 1777.15 Public infrastructure - Rates and terms.

Public infrastructure loans will bear interest at not more than the maximum rate of 5 percent per annum. The rates and terms will be in accordance with 7 CFR 1780 Water and Waste Loans and Grants.

§§ 1777.16 through 1777.29 [Reserved]

§ 1777.30 Individual loans and grants - Making, processing, and servicing loans and grants.

Funding appropriated, designated, or otherwise approved to be delivered in accordance with the individual provisions of this part may be awarded directly to the individual(s) by this Agency or another designated Agency, such as United States Department of Agriculture's Rural Housing Service (RHS), or to the public water supply system and/or waste disposal facility for administration, including Tribes and Tribal organizations. When loan or grant funding is transferred to RHS, funding will be administered in accordance with subpart C of 7 CFR 3550 and other applicable provisions.

§ 1777.31 Individual loan and grant eligibility.

(a) When loan awards are made by RUS to individuals, the individuals must meet the applicable requirements of paragraphs (a)(1) through (5) of this section:

(1) Must demonstrate adequate ability to repay the loan;

(2) Have an ownership interest in the dwelling to be improved or connected to the system, and the dwelling must be located in an eligible, rural area;

(3) At the time of loan approval, the household's 12-month adjusted income must not be more than the statewide nonmetro median household income for the state or

territory in which the individual resides, according to the most recent decennial census.

Adjusted income is used to determine program eligibility and the amount of payment subsidy for which the household qualifies. Adjusted income is annual income less any of the following deductions for which the household is eligible:

(i) For each household member, except the head of household or spouse, who is under 18 years of age, 18 years of age or older with a disability, or a full-time student, the amount determined pursuant to section 501(b)(5) of the Housing Act of 1949, as amended.

(ii) A deduction of reasonable expenses for the care of minor 12 years of age or under that:

(A) Enable a family member to work or to further a member's education;

(B) Are not reimbursed or paid by another source; and

(C) In the case of expenses to enable a family member to work do not exceed the amount of income earned by the family member enabled to work.

(iii) Expenses related to the care of household members with disabilities that:

(A) Enable a family member to work;

(B) Are not reimbursed from insurance or another source; and

(C) Are in excess of three percent of the household's annual income.

(iv) For any elderly family, a deduction in the amount determined pursuant to section 501(b)(5) of the Housing Act of 1949, as amended.

(v) For elderly households only, a deduction for household medical expenses that are not reimbursed from insurance or another source and which in combination with any expenses related to the care of household members with disabilities described in paragraph (a)(3)(iii) of this section, are in excess of three percent of the household's annual income;

(4) Must not be delinquent on any Federal debt; and,

(5) Are unable to pay for the costs of improvements without the loan.

(b) Grants may be made to individuals who meet all applicable requirements of paragraphs (b)(1) through (4) of this section:

(1) Have an ownership interest in the dwelling to be connected to the system or improved and located in an eligible, rural area;

(2) At the time of grant approval, meet the income requirements established within item (a)(3) of this part;

(3) Must not be delinquent on any Federal debt; and

(4) Are unable to pay for the costs of improvements without a grant.

§ 1777.32 Individual loans and grants - Use of funds.

(a) Prior to awarding funds to a public water supply and/or waste disposal system, the approval official must determine that this is a practical and economical method of connecting individuals to the community water and/or waste disposal system. Funds awarded pursuant to this section can only be used for loans to individuals, and awarded grant funds can only be used for grants to individuals.

(b) Funds may be used to:

(1) Extend service lines to residence.

(2) Connect service lines to residence's plumbing.

(3) Pay reasonable charges or fees for connecting to a community water and/or waste disposal system.

(4) Pay for necessary installation of plumbing and related fixtures within dwellings lacking such facilities.

(5) Construction and/or partitioning off a portion of dwelling for a bathroom only if such bathroom is modest in design and size as determined by the Agency.

(6) Pay reasonable costs for closing abandoned septic tanks and water wells when necessary to protect the health and safety of recipients of a grant in paragraphs (b)(1) or (b)(2) of this section and is required by Tribal, local or applicable law.

§ 1777.33 Individual loans and grants – Administration of funds.

(a) *General.* For applications submitted by water or waste disposal systems or other eligible entities to benefit individuals, the amount of loan and grant funds approved by the Agency will be based on the need documented in the executed loan and grant documents between the Agency and the entity. The loan and grant documents include but are not limited to items such as the purpose, how funds will be used, proposed application process for individuals, construction requirements, and the control and disbursement of funds. Construction requirements must meet applicable building codes, statutes and regulations.

(b) *Review.* The loan and grant documents executed between RUS and the entity will set forth the procedures and regulations for making and servicing loans and grants made by the water or waste disposal systems, or other eligible entity, to individuals. The entity is responsible for:

(1) Understanding all provisions of the loan and grant documents; and

(2) Servicing loans and grants in the manner outlined in the executed loan and grant documents.

(c) *Scoring.* For applications submitted by water or waste disposal systems or other eligible entities to benefit individuals, the criteria in paragraphs (c)(1) through (9) of this section will be used to rank applications and in selecting projects for funding.

(1) *Lending experience.* Degree of expertise and successful experience in making and servicing loans to individuals. Up to 15 points

(2) *Operational experience.* Degree of expertise and experience in operating and maintaining water or waste disposal system. Up to 15 points

(3) *Work plan*. Extent to which the work plan demonstrates a well thought out, comprehensive approach to accomplishing the objectives of this part, clearly defines who will be served by the project, and appears likely to be sustainable. Up to 15 points

(4) *Population*. The system after the proposed project will primarily serve a rural area having a population:

- (i) Not in excess of 1,000 - 25 points.
- (ii) Between 1,001 and 2,500 - 15 points.
- (iii) Between 2,501 and 5,500 - 5 points.

(5) *Income*. The median household income of population to be served by the proposed project is:

- (i) Not in excess of 50 percent of the SNMHI - 30 points.
- (ii) More than 50 percent and not in excess of 60 percent of the SNMHI income - 20 points.
- (iii) More than 60 percent and not in excess of 70 percent of the SNMHI - 15 points.

(6) *Joint financing*. The amount of funds, other than RUS funds, committed to the proposed project is:

- (i) Fifty percent or more - 15 points.
- (ii) Twenty to forty-nine percent - 10 points.
- (iii) Five to nineteen percent - 5 points.

(7) *Colonia*. (See definition in § 1777.4). The proposed project will provide water or waste disposal services to the residents of a recognized Colonia - 25 points.

(8) *Access and health risks*. (i) A service area that lacks access to both water and waste disposal facilities, resulting in a significant health risk - 50 points.

(ii) A service area that lacks access to either water or waste disposal facilities, resulting in a significant health risk - 40 points.

(iii) A service area that has access to water and waste disposal facilities but has a significant health risk - 20 points.

(9) *Discretionary*. (i) State Director or designee with loan and grant approval authority in certain cases, and when a written justification is prepared, may assign up to 15 points for administrative and programmatic priorities for items including, but not limited to, natural disasters, funding or priority coordination between RUS and other agencies, including leveraged funding, for award to applicants under this program, to assist those projects that are the most cost effective, or to projects located in areas experiencing high unemployment and poverty rates and severe health risks.

(ii) RUS Administrator may assign up to 15 additional points that will be considered in the total points for items including, but not limited to, the geographic distribution of funds nationally and within the state, and the severity of health risks. Any funds transferred to RHS for individual assistance will be administered following the provisions established in their governing statutes, regulations or policy. However, funds cannot be used to make improvements to the residence, except for the improvements authorized by §1777.32. Funds cannot be used to pay individuals for their own labor. RUS transferred funds to RHS that remain after providing individual loans and grants will be returned to RUS or its successors.

§ 1777.34 Individual loans - Rates and terms.

Individual loans will bear interest at not more than the maximum of 5 percent per annum, or the Federal Financing Bank or other Agency designated source, on loans of a similar term at the time such loans are made. The term will not exceed the estimated useful life of the eligible improvements financed or as determined by tribal or state law or statute, whichever is less.

§§ 1777.35 through 1777.41 [Reserved]

§ 1777.42 Delegation of authority.

The Administrator may delegate approval authority under this section, to the Assistant Administrator, WEP in accordance with 7 CFR 1780.

§ 1777.43 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this part which is not inconsistent with the authorizing statute or other applicable law and is determined to be in the Government's interest.

§ 1777.44 Availability of forms and regulations.

Information on forms and regulations are available online from the Agency website.

§§ 1777.45 through 1777.99 [Reserved]

§ 1777.100 OMB control number.

The reporting and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget and assigned OMB control number 0572-0121.

Andrew Berke
Administrator
Rural Utilities Service

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